

Employee who retired weeks before retirement incentive announced not entitled to damages

Date : April 1, 1998

After 30 years as an employee at Inco's Port Colborne Refinery, Nuxoll took early retirement on April 1, 1995. On May 4, 1995, Inco offered an early retirement incentive that would have been worth between \$25,000 and \$30,000 to Nuxoll. Not surprisingly, he was not at all pleased about this development and sued the company, claiming he had been induced to leave before the incentive was made available. Nuxoll argued that Inco had negligently represented to him that it would not be offering a retirement incentive, or that it had been negligent in withholding relevant information concerning its intentions to reduce its workforce and to offer an early retirement incentive. The company countered that it had not made any such representations, nor had it withheld relevant information.

In the year before Nuxoll retired, the subject of a possible early retirement incentive was a topic of intense concern among Refinery employees. Nuxoll claimed he had been told by a company official in 1994 that employees would never be offered a package. Inco's witnesses countered that employees had been told only that no packages would be offered in 1994.

In a decision released on November 10, 1997, Nuxoll's claim was dismissed. The Ontario Court General Division found first that Nuxoll had not been told there would never be a package. It then considered whether relevant information had been negligently withheld. Nuxoll argued that a study conducted by Inco in 1993 called for discontinuing some of the Refinery's production in 1995, and that Inco was duty-bound to disclose this information to a long-term employee eligible for incentives.

The court found that the information was a recommendation only, and that no duly authorized decision to offer the package had been made before Nuxoll retired. Inco was not obliged to grant full disclosure of internal company recommendations. The court also rejected the claim that Inco had contrived to deceive employees into leaving before the package was announced.

For further information on this subject, please contact [Andrew Tremayne](#) at (613) 563-7660, Extension 236.